

#### REMARKS

In the outstanding official action, claim 3 was objected to and also rejected under 35 USC 112 because of a suggested discrepancy between the scope of claim 2 and claim 3 which previously depended from claim 2. In response, it is respectfully submitted that no such discrepancy exists, because claim 3 does not recite "the order of magnitude of said angle is  $45^{\circ} + \text{or} - 1^{\circ}$ " but rather that "the magnitude of said angle is  $45^{\circ} + \text{or} - 1^{\circ}$ ". Therefore, claim 3 properly further limits the recitation of claim 2, wherein it is recited that "the order of magnitude of said angle is  $45^{\circ}$ ", a broader recitation than that of claim 3. In any case, it is respectfully submitted that the objection and rejection of claim 3 has been rendered moot by the cancellation of claim 2, without prejudice, and the amendment of claim 1 to add the limitation "an angle of about  $45^{\circ}$ ". Additionally, claim 3 is herewith amended to depend from claim 1, and properly further limits the recitation of "an angle of about  $45^{\circ}$ " by more narrowly reciting "an angle of  $45^{\circ} + \text{or} - 1^{\circ}$ ". Accordingly, it is respectfully submitted that claim 3 is now in proper form.

On the merits, claims 1, 6, 7, 8 and 9 were rejected under 35 USC 102(b) as being anticipated by Uchiyama et al, with claims 2, 3 and 5 being rejected under 35 USC 103(a) as being unpatentable over

Uchiyama and claim 4 being rejected under §103(a) as being unpatentable over Uchiyama in view of Applicants admitted prior art, all for the reasons of record.

In response, independent claims 1 and 8 are herewith amended to more particularly and precisely recite the novel and unobvious features of the instant invention, and it is respectfully submitted that these claims, as herewith amended, and the remaining claims depending therefrom, are now clearly patentably distinguishable over the cited and applied references for the reasons detailed below.

In the Action, it is suggested that claims 1 and 8 are anticipated by Uchiyama, although it is admitted that Uchiyama is "silent" as to the order of magnitude of this angle being 45°. Accordingly, it is respectfully submitted that claims 1 and 8, as herein amended to recite an angle of about 45° are clearly not anticipated by Uchiyama, which is admittedly "silent" with respect to this recitation.

In response to the suggestion in the Action that Fig. 5 of Uchiyama shows an angle "that appears to be about 45°, but admittedly fails to disclose the exact degree amount of the angle, it is respectfully submitted to the well-established law that drawings are not to be read to scale, such that dimensions or angles may be extracted therefrom, absent an express indication

within the reference that the drawing is to scale. Furthermore, the text of the reference clearly establishes that the angles shown in Fig. 5 are clearly not accurately or precisely shown.

Thus, the dotted line connecting the first light source 11 and the beam splitter 13-1 is expressly stated in the specification (in the paragraph bridging columns 9 and 10 of the reference) to be substantially parallel to the side wall 302 of the housing 300, and in fact appears to be substantially parallel in Fig. 5. However, the next sentence of the specification (col. 10, lines 2-4) expressly states that the line connecting the second light source 21 and the beam splitter 13-1 is substantially perpendicular to the side wall 302, thus defining an angle of about 90°. However, an examination of Fig. 5 will show that the line between second light source 21 and the beam splitter 13-1 is in fact shown in the figure as being at an angle of about 60° to the sidewall 302, a very substantial difference from the expressly stated angle of 90°. Thus, Fig. 5 clearly may not be relied upon for any teaching whatsoever with respect to the angles of the various lines shown. Furthermore, since it is expressly taught in the reference that the line coming out of element 11 and the line connecting elements 21 and 13-1 are substantially perpendicular, and the line connecting W1 and W2 is shown in Fig. 5 as being substantially parallel to the line connecting elements 21 and 13-1, an equally plausible

interpretation of the reference (assuming one could derive accurate angle information from the figure) is that the line connecting W1 and W2 is in fact perpendicular to the line connecting element 11. Accordingly, it is respectfully submitted that it has been clearly demonstrated that not only does the reference fail to disclose the degree amount of the angle, but that Fig. 5 is clearly not even approximately accurate as to regard to the degree amount of the angles shown and therefore cannot be used to show or suggest such a teaching.

In view of the foregoing amendments and remarks, it is respectfully submitted that independent claims 1 and 8, as herewith amended to more particularly and precisely recite the instant invention, and the remaining claims depending therefrom, are clearly patentably distinguishable over the cited and applied references. Accordingly, allowance of the instant application is respectfully submitted to be justified at the present time, and favorable consideration is earnestly solicited.

Respectfully submitted,

By   
\_\_\_\_\_  
Steven R. Biren, Reg. 26,531  
Attorney  
(914) 333-9630